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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/002123

Applicant(s)

Roddy

Examiner

Faden

Group Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

☒ Responsive to communication(s) filed on 9-4-98

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is approved disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some\* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

Interview Summary, PTO-413

☒ Notice of References Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-12, 20-21 and 25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wesdorp.

Wesdorp discloses a spread containing a mesomorphic phase of edible surfactant. The claims are seen to be fully shown at the following passages in Wesdorp: for claim 1, see example II-7 and abstract; claim 2, see example II-13; claim 3 and 7, see example II-19; claim 4, see abstract; claims 5, 6 and 8, see example II-23; claims 9 and 10, see column 8, lines 28-38; claims 11 and 25, see column 9, lines 62-67 and column 10, lines 1-5; claim 12, see example II-18; claims 20-22, see column 8.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-19 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wesdorp alone or if necessary in view of Singer (146).

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Wesdorp discloses spreads containing mesomorphic phases. Claims 1-12, 20-22 and 25 are seen to be fully met by the Wesdorp reference. Claims 13-19 and 23-24 appear to differ from the reference in the recitation of the amount of triglyceride fat in the product. It would be obvious to one of ordinary skill in the art to flavor the product of Wesdorp with butter fat in the form of a triglyceride fat in order to obtain a more butter-like product. It is appreciated that "lipophilic flavor" is not indicated in the product but to flavor the spread of Wesdorp with butter fat or some other lipophilic flavor is seen to be an obvious means of producing a flavored spread. Further teaches the use of a lipophilic flavor delivery system for fat free foods. The product is seen to be lipophilic because it contains flavor-filled fat globules. It would be obvious to one of ordinary skill in the art to use the flavor delivery system of Singer in the spread of Wesdorp in order to enhance the flavor of the product without adding a lot of fat to the product.

Claims 1 and 3-21 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Heertje.

Heertje discloses low fat spreads and dressings that contain mesomorphic phases with fat, biopolymers and edible surfactants. The following passages of Heertje are seen to fully meet the claims: Claims 1, 7, 8, 10, 20 and 21, see abstract; claim 3 and 12, see column 6, lines 1-25; claims 4-6, see example 6; claim 9, see column 3, lines 15-19; claim 12, see column 6, lines 1-25 and claims 13-19, see example 10.

Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heertje in view of Singer.

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Heertje has been discussed above and claims 1 and 3-21 are seen to be fully met by Heertje. Singer discloses a lipophilic flavor delivery system for fat free foods. The product is seen to be lipophilic because it contains flavor-filled fat globules. It would be obvious to one of ordinary skill in the art to use the flavor delivery system of Singer in the spread of Wesdorp in order to enhance the flavor of the product without adding a lot of fat to the product.

Claims 1, 2, 4, 6, 8, 9, 10 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Heertje (WO 92/09209).

These claims do not appear to differ from the Heertje published PCT and note the following passages in the reference: claims 1 and 4, see example II.11 on pages 41 and 42; claim 2, see page 44; claim 9, page 11, lines 26-37.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Paden whose telephone number is (703) 308-3294. The examiner can normally be reached on Monday to Friday from 8:30 to 4:00.

The fax phone number for this Group is (703) 305-3599 or 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Carolyn Paden*  
CAROLYN PADEN 11/16/92  
PRIMARY EXAMINER  
ART UNIT 132 (1161)